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OFFICE OF PETITIONS

In re Application of :
Jack L. Kerrebrock et al :
Application No.08/791,057 : **DECISION ON REQUEST FOR REFUND**
Filed: January 13, 1997 :
Attorney Docket No. 96-1781 :

This is a decision on the communication entitled "RESPONSE TO NOTICE OF NON-ACCEPTANCE OF DEFICIENCY SUBMISSION UNDER 37 C.F.R. §1.28 AND REQUEST FOR REFUND UNDER 37 C.F.R. §1.26" filed May 19, 2011.

The request is **GRANTED**.

Applicant files the above request and states that "... With respect to the filing by MIT of the Deficiency Payment, it is submitted that such action was itself in error. At the time of payment of the 12th year maintenance fee, the '470 patent was licensed to a company meeting the requirements of 37 C.F.R. §1.27(2) (i.e., the licensee company was a "small business concern"). MIT itself is a "university or other institution of higher education", and so small entity status was and continues to be appropriate pursuant to 37 C.F.R. §1.27(a)(3).

... Since the Deficiency Payment was both not accepted and indeed not necessary considering that small entity status has never been lost in the subject patent, the charge of \$2,055.00 to Deposit Account No. 192553 on January 12, 2011 was in excess of what was required. MIT is therefore entitled to a refund under 37 C.F.R. §1.26(a)."

The request for refund of the deficiency payment is granted. Small entity status will remain based on a review of the file record as a whole.

As authorized, the \$2,055.00 deficiency payment paid on January 10, 2011, is being credited to petitioner's deposit account as authorized.

Application No. 08/791,057
Patent No. 5,904,470

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Any questions concerning this matter may be directed to the undersigned at (571) 272-3208.

/KOC/
Karen Creasy
Petitions Examiner
Office of Petitions